



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1919

NO. 399

CHARLES K. HOGAN, APPELLANT

v.

WILLIAM H. O'NEILL, CHIEF OF POLICE OF THE
CITY OF EAST ORANGE, NEW JERSEY, APPELLEE

BRIEF FOR THE APPELLEE

STATEMENT OF THE CASE

The appellant, who is hereinafter referred to as the defendant, was jointly indicted with one Hanson by the Grand Jury of Suffolk County, Massachusetts, in an indictment that charged the defendant and said Hanson with the crime of conspiracy to steal the property, money, goods and chattels of the Market Trust Company, a banking corporation legally established and existing within the said County of Suffolk, on the eighteenth day of August, 1916.

The defendant at some time after the said eighteenth day of August, 1916, left the Commonwealth of Massachusetts and returned to the State of New Jersey where he had his permanent home.

A demand by the Governor of Massachusetts was duly made upon the Governor of New Jersey asking for the rendition of the defendant and on the twenty-first day of February, 1919,

the Governor of New Jersey issued his warrant to the respondent herein authorizing and requiring him to take the defendant into custody and to deliver him forthwith to James R. Claffin, the duly appointed agent of Massachusetts, for the purpose of effecting the rendition of the defendant to the Commonwealth of Massachusetts, and thereafter on the first day of March, 1919, the defendant filed a petition in the District Court of the United States for the District of New Jersey for a writ of *habeas corpus* asking that he be released from the custody of the respondent in whose custody he then was by virtue of said warrant of the Governor of New Jersey.

In a hearing upon said petition for the writ of *habeas corpus* the same was dismissed by the Court for the reasons assigned in the opinion of the Court as set forth in the record.

The case involves two issues:

- (1) As to whether or not the defendant was a fugitive from justice from the Commonwealth of Massachusetts; and
- (2) Whether or not the defendant was properly charged with crime in Massachusetts. *

The testimony pertinent to the issues raised by the assignment of error briefly was as follows:

At the hearing upon the petition the defendant admitted upon the witness stand that he was in the Commonwealth of Massachusetts at or about the date set forth in the indictment as the time when the crime was alleged to have been committed.

There was no evidence that the defendant committed in Massachusetts any overt act in pursuance of the objects of the alleged conspiracy.

The defendant admitted the receipt on his return to New Jersey of various checks amounting in the aggregate to \$22,451 from Hanson, the person with whom he was jointly indicted.

ARGUMENT

I

The defendant having admitted that on or about the time the indictment alleges the crime was committed he was in the Commonwealth of Massachusetts in company with the codefendant Hanson and that thereafter he departed from the said Commonwealth establishes beyond contradiction that he is a fugitive from the justice of the Commonwealth of Massachusetts.

Roberts v. Reilly, 116 U. S. 80.

Munsey v. Clough, 196 U. S. 364.

Appleyard v. Massachusetts, 203 U. S. 22.

Drew v. Thaw, 235 U. S. 432.

II

In the Commonwealth of Massachusetts the crime of conspiracy is complete upon the making of the unlawful agreement irrespective of whether or not any overt act is thereafter performed for the purpose of carrying out the conspiracy.

Com. v. Judd, 2 Mass. 329, 337.

Com. v. Tibbetts, 2 Mass. 536, 538.

Com. v. Warren, 6 Mass. 74.

Com. v. Hunt, 45 Mass. (4 Metcalf) 111.

Com. v. Rogers, 181 Mass. 184, 191.

Com. v. Stuart, 207 Mass. 563.

III

The indictment in this case was in the form prescribed by the statutes of the Commonwealth of Massachusetts in such case made and provided.

Revised Laws of Massachusetts, ch. 218, s. 67.

IV

The accusation on which the requisition is based will not be scrutinized with technical accuracy. If it charges a crime substantially, the determination of its technical sufficiency as a pleading must be referred to the courts of the demanding state.

Roberts v. Reilly, 116 U. S. 80.

Re Roberts, 24 Federal, 132.

Re Vorhees, 32 N. J. 141.

V

This Court has decided that it will take judicial notice of the laws of the demanding state in rendition cases.

Roberts v. Reilly, 116 U. S. 80.

VI

It is provided by the statutes of the Commonwealth of Massachusetts that the allegation of place in the caption shall be considered as an allegation that the act was committed within the territorial jurisdiction of the court.

Revised Laws of Massachusetts, ch. 218, s. 20.

"The time and place of the commission of the crime need not be alleged unless it is an essential element of the crime. The allegation of time in the caption shall, unless otherwise stated, be considered as an allegation that the act was committed before the finding of the indictment, after it became a crime, and within the period of limitations. The name of the county and court in the caption shall, unless otherwise stated, be considered as an allegation that the act was committed within the territorial jurisdiction of the court. All allegations of the indictment shall, unless otherwise stated, be considered to refer to the same time and place."

It is respectfully submitted that the decision of the Court discharging the writ of *habeas corpus* and remanding the defendant to the custody of the respondent was in accordance with the evidence and the law and that no prejudicial error was made and that therefore the judgment of the District Court should be affirmed.

Respectfully submitted,

JOSEPH C. PELLETIER,

*District Attorney for the Suffolk
District, Commonwealth of
Massachusetts.*

WILLIAM S. KINNEY,

*Assistant District Attorney for the
Suffolk District, Commonwealth
of Massachusetts.*